Re: LCP Chemicals - Georgia Site
Ref: CERCLA 97-003

DECISION DOCUMENT
PREAUTHORIZATION OF A CERCLA SECTION 111(a) CLAIM

THE LCP CHEMICALS-GEORGIA SUPERFUND SITE
BRUNSWICK, GLYNN COUNTY, GEORGIA

I. STATEMENT OF AUTHORITY

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9611, authorizes the reimbursement of response costs incurred in carrying out the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"). Section 112 of CERCLA, 42. U.S.C. § 9612 directs the President to establish the forms and procedures for filing claims against the Hazardous Substance Superfund ("Superfund" or "Fund"). Executive Order 12580 (52 Fed Reg. 2923, January 29, 1987) delegates to the Administrator of the Environmental Protection Agency ("EPA" or "Agency") the responsibility for CERCLA claims and for establishing forms and procedures for such claims. The forms and procedures can be found in the Response Claims Procedures for the Hazardous Substance Superfund, 40 C.F.R. Part 307, 58 Fed. Reg. 5460 (January 21, 1993). Executive Order 12580 also delegates to the EPA Administrator the authority to reach settlements pursuant to Section 122(b) of CERCLA, 42 U.S.C. § 9622(b). The Director of the Office of Emergency and Remedial Response ("OERR") is delegated authority to evaluate and make determinations regarding claims (EPA Delegation 14-9, September 13, 1987 and EPA Redelegation 14-9 "Claims Asserted Against the Fund," May 25, 1988).

II. BACKGROUND ON THE SITE

A. The LCP Chemicals-Georgia Superfund Site (hereafter the "Site") is a former chemical manufacturing facility located just outside the city limits of Brunswick, in Glynn County, Georgia. The Site is roughly 550 acres in size, with about 500 acres of the Site consisting of environmentally-sensitive marshlands. The remaining 50 acres of the Site, consisting of uplands, has contained industry since the early 1920s when an oil refinery was built there. At various times since then, the uplands portion of the Site has also housed an electric power plant and a facility for the manufacture and distribution of paint. A chlor-alkali plant was built at the Site in 1955 and operated there until 1994; the plant manufactured chlorine, caustic soda, and hydrogen via a process involving salt water, mercury, and large amounts of electricity. All industrial activity at the Site ended when LCP Chemicals - Georgia, Inc. abruptly ceased operations at the facility on February 1, 1994.

B. Investigations of the facility by State and Federal authorities following termination of industrial activity revealed widespread contamination of soil, sediments, and surface-waters due to releases of mercury, polychlorinated biphenyls ("PCBs"), polyaromatic hydrocarbons ("PAHs"), lead, general refinery sludges, and other hazardous substances. The two large structures at the Site in which chlorine had been manufactured since 1955 were in overall terrible condition, they contained visible structural deficiencies, and were considered to be in danger of collapsing in whole or in substantial part. Concern for the failure of these buildings was heightened because they normally contained up to 500,000 lbs of elemental mercury. A deteriorated on-Site stormwater sewer system acted as a direct conduit for the transfer of hazardous substances to the marsh, and numerous waste impoundments and disposal areas were located in areas regularly influenced by the typical eight foot tidal fluctuations, storm surges, and stormwater runoff.

C. On March 31, 1994, U.S. EPA Region 4 issued a Unilateral Administrative Order for Removal Response Activities (the "Initial UAO") to abate the endangerments that had been identified to date, and on March 27, 1995 amended the Initial UAO to expand the scope of the work and modify the list of Respondents (the "Removal UAO"). To initiate remedial objectives, EPA entered into an Administrative Order on Consent for RI/FS on June 6, 1995; on June 17, 1996 the Site was listed on the NPL soon after the State of Georgia designated the Site as its highest priority facility.

D. Since March 1994, removal response activities performed by EPA and the Respondents under the Removal UAO appear in large measure to have addressed the immediate environmental endangerments at the Site. The chlor-alkali plant buildings have been decommissioned and demolished, stored chemicals and wastewaters have been treated and/or disposed of, water supply wells have been closed, and numerous disposal impoundments have been excavated and backfilled. However, contaminants, chiefly lead, PCBs, and mercury, had entered the sediments, water, and biota of the marsh system.

E. Review by EPA of all the data collected in the marsh demonstrate that the vast majority of the mass of contaminants of concern in the marsh system are concentrated within an area approximately 13 acres in size. Accordingly, the Emergency Removal and Response Branch, Waste Management Division, EPA Region 4 has determined that it is necessary to undertake an additional stage of the removal action in the marsh, specifically, the excavation of an area approximately 13 acres in size roughly contiguous with the uplands, along with the excavation of portions of two drainageways within the southern portion of the marsh (collectively, the "13 acre marsh area").

F. The action will consist of the excavation of the root mat component of the marsh sediment (typically 12-18 inches) from the 13-acre area and two designated ditches. The initial step will be to survey and delineate the designated removal areas in the marsh. Following the in-field delineation, a perimeter dike will be constructed

surrounding the approximately 13 acres of marsh, and sediment control structures will be installed at the downstream end of the two drainageways; both will serve to limit the potential for affected sediment migration. The diked marsh area will be excavated using conventional equipment to a depth just beyond the root mat, followed by on-site processing (screening, dewatering) and chemical characterization of excavated material. Subsequently, appropriate off-site disposal (hazardous, non-hazardous, or TSCA regulated) for the excavated sediment will be implemented. Marsh root mat/sediment removal will proceed in a step-wise fashion throughout the 13-acre area. As the excavation proceeds across the marsh, excavated areas will be backfilled with clean soils to design grade and seeded with Spartina grasses native to the Brunswick estuary. The excavation process will continue in this manner until completion of the removal action within the 13-acre area.

G. Placement of a cover of clean soil, a minimum of 12 inches in thickness, followed by revegetation of the area with native marsh grasses, will provide a physical barrier to potential exposure to low levels of residual constituents that may remain in isolated deeper sediments within the 13-acre area. Sediment removal within the two identified drainageways will be performed by mechanical excavation or with a hydraulic dredge, depending on EPA's on-Site evaluation. Based upon a review of existing site characterization data, the action will entail removal of drainageway sediment within the confines of the ditch to a depth of up to 12 inches and to the existing vegetation line. Particular care will be taken during this portion of the removal action to limit the potential for sediment re-suspension to minimize the transport of affected sediments from the removal action area.

III. FINDINGS

A. Preauthorization (i.e., EPA's prior approval to submit a claim against the Superfund for reasonable and necessary response costs incurred as a result of carrying out the NCP) represents the Agency's commitment to reimburse a claimant from the Superfund, subject to any maximum amount of money set forth in this PDD, if the response action is conducted in accordance with the preauthorization and costs are reasonable and necessary. Preauthorization is a discretionary action by the Agency taken on the basis of certain determinations.

B. EPA has determined, based on its evaluation of relevant documents and the Settlors' Application for Preauthorization ("Application") pursuant to 40 C.F.R. Section 300.700(d) that:

(1) A release or potential release of hazardous substances warranting a response under Section 300.415 of the NCP exists at the Site;

(2) The Settlors have agreed to fund and perform a stage of the response action constituting excavation of an area of the Site, designated in the

Agreement and Order as the 13 acre marsh area, that was selected by EPA to address a threat posed by releases at the Site (the "Marsh Removal Action";

(3) The Settlors have demonstrated engineering expertise and a knowledge of the NCP and attendant guidance;

(4) The activities proposed by the Settlors, when supplemented by the terms and conditions contained herein, are consistent with the NCP; and

(5) The Settlors have demonstrated efforts to obtain the cooperation of the State of Georgia.

C. EPA has determined, consistent with 40 C.F.R. Section 307.23, that the Application submitted by the Settlors demonstrates a knowledge of relevant NCP provisions, 40 C.F.R. Part 307, and EPA guidance sufficient for the conduct of the stage of the response action at the Site.

D. The Settlors are generally obligated to comply with all provisions and representations in the Application, and to notify EPA of any changed circumstances which alter those provisions. If circumstances change between the time the Application is submitted, and the time of implementation of the Marsh Removal Action, it is in EPA's discretion to determine which Application provisions are still valid and which provisions no longer apply. The Agreement and Order, including the terms and conditions of the PDD, the Marsh Excavation Plan, and the Project Schedule and Site Workplan ("PS/SW") shall govern the conduct of response activities at the Site. In the event of any ambiguity or inconsistency between the Application and this PDD, with regard to claims against the Fund, the PDD and the Agreement and Order shall govern. In the event of any ambiguity or inconsistency between the Agreement and Order and the PDD, the Agreement and Order shall govern.

IV. PREAUTHORIZATION DECISION

I preauthorize the Settlors to submit a claim(s) against the Superfund for an amount not to exceed the lesser of One Million Seven Hundred Thousand Dollars ($1,700,00), or thirty four and one-half percent (34.5%) of the estimated $4.925 million in reasonable and necessary eligible costs for design and execution of the Marsh Removal Action incurred pursuant to the Agreement and Order and the Marsh Excavation Plan (Exhibits 1 and 2). This preauthorization is subject to compliance with the Agreement and Order and the provisions of this PDD.

V. AUDIT PROCEDURES

A. The Settlors shall develop and implement audit procedures which will ensure their ability to obtain and implement all agreements to perform preauthorized response actions, in accordance with sound business judgment and good administrative practice as required by 40 C.F.R. Section 307.32(e). Those requirements shall include but not necessarily be limited to the following procedures.

B. The Settlors will develop and implement procedures which provide, to the maximum extent practicable, adequate public notice of solicitations for offers or bids on contracts. Solicitations must include evaluation methods and criteria for contractor selection. The Settlors shall notify EPA of the qualifications of all contractors and principal subcontractors hired to perform the preauthorized response actions. EPA shall have the right to disapprove the selection of any contractor or subcontractor selected by the Settlors. EPA shall provide written notice to the Settlors of the reason(s) for any such disapproval.

C. The Settlors will develop and implement procedures for procurement transactions which, in accordance with 40 C.F.R. Section 307.21(e): provide maximum open and free competition; do not unduly restrict or eliminate competition; and provide for the award of contracts to the lowest, responsive, responsible bidder. The Settlors and their contractors shall use free and open competition for all supplies, services and construction with respect to the Marsh Removal Action performed at the Site. There are a number of ways that the Settlors can meet these requirements including but not limited to the following:

(1) For example, if the Settlors award a fixed price contract to a prime contractor, the Settlors have satisfied the requirement of open and free competition with regard to any subcontracts awarded within the scope of the prime contract.

(2) The Settlors are not required to comply with the Federal procurement requirements found at 40 CFR Part 33 or EPA's Guidance on State Procurement Under Remedial Cooperative Agreements (OSWER Directive 9375.1-11, June 1988), in meeting these requirements. However, EPA does require that the Settlors use these documents for general guidance in developing procurement procedures for small purchases, formal advertising, competitive negotiations and noncompetitive negotiations as each may be appropriate to the Marsh Removal Action at the Site.

(3) With reference to small purchase procedures, EPA defines small purchase procedures as those relatively simple, informal procurement methods for securing services, supplies and other property from an

adequate number of qualified sources in instances in which the services, supplies and other property being purchased constitute a discrete procurement transaction and do not cost more than a certain amount in the aggregate (Example: $25,000). The Settlors can meet the requirements of maximum free and open competition with respect to small purchases by developing procedures which follow 40 CFR Part 33 or EPA's Guidance on State Procurement Under Remedial Cooperative Agreements (OSWER Directive 9375.1-11, June 1988). However, the Settlors shall in no event divide procurement transactions into smaller parts solely to avoid the dollar limitation.

D. The Settlors may use a list or lists of prequalified persons, firms, or products to acquire goods and services. The Settlors shall make each pre-qualification using evaluation methods and criteria which are consistent with such selection and evaluation criteria developed pursuant to this Section, as are appropriate. Such list(s) must be current and include enough qualified sources to ensure maximum open and free competition. The Settlors shall not preclude potential offerors not on the prequalified list from qualifying during the solicitation period.

E. The Settlors shall develop and implement procedures to settle and satisfactorily resolve all contractual and administrative matters arising out of agreements to perform preauthorized response actions, in accordance with sound business judgment and good administrative practice as required by 40 C.F.R. Section 307.32(e).

F. All of the following actions shall be conducted in a manner to assure that the preauthorized response actions are performed in accordance with all terms, conditions and specifications of contracts consistent with EPA's mixed funding regulations: (1) invitations for bids or requests for proposals; (2) contractor selection; (3) subcontractor approval; (4) change orders and contractor claims (procedures should minimize these actions); (5) resolution of protests, claims, and other procurement related disputes; and, (6) subcontract administration.

G. The Settlors shall develop and implement a change-order management policy and procedure generally in accordance with EPA's guidance on State Procurement Under Remedial Cooperative Agreements (OSWER Directive 9375.1-11, June 1988).

H. The Settlors shall develop and implement a financial management system that consistently applies generally accepted accounting principles and practices and includes an accurate, current, and complete accounting of all financial transactions for the Marsh Removal Action, complete with supporting documents, and a systematic method to resolve audit findings and recommendations.

I. Consistent with the Agreement and Order, the Settlors shall develop and submit to EPA a strategy to address the management approach for implementing the Marsh

Removal Action, including but not limited to procurement methods and contracting strategy.

J. Consistent with the Agreement and Order, the Settlors shall develop and submit to EPA a plan addressing how the activities are to be implemented and coordinated with EPA. This plan shall include an identification of key project management personnel, complete with roles, responsibilities and lines of authority (financial and decisional), and an organizational chart.

K. Modification of elements or performance requirements of the Marsh Removal Action contained in the Agreement and Order or Marsh Excavation Plan shall require EPA's approval. Such modifications, when approved by EPA in accordance with Agency procedures, shall modify this PDD.

VI. CLAIMS PROCEDURES

A. Pursuant to section 111(a)(2) of CERCLA, EPA may reimburse necessary response costs incurred as a result of carrying out the NCP that satisfy the requirements of 40 C.F.R. Section 307.21, subject to the following limitations:

(1) Costs may be reimbursed only if incurred after the date of this preauthorization; and

(2) Costs incurred for long-term operation and maintenance are not eligible for reimbursement from the Superfund. Also ineligible is the cost of treatment systems after construction or installation and commencement of operations.

B. In submitting claims to the Superfund, the Settlors shall:

(1) Document that response activities were preauthorized by EPA;

(2) Substantiate all claimed costs through an adequate financial management system that consistently applies generally accepted accounting principles and practices and includes an accurate, current and complete accounting of all financial transactions for the project, complete with supporting documents, and a systematic method to resolve audit findings and recommendations; and

(3) Document that all claimed costs were eligible for reimbursement, consistent with applicable requirements of 40 C.F.R. Part 307.

C. Claims may be submitted against the Fund by the Settlors only while the Settlors are in compliance with the terms of Agreement and Order and only:

(1) no earlier than after completion of all Site Marsh Removal Actions for which the Settlors will seek reimbursement from the Fund; and

(2) no later than one year following completion of all Site Marsh Removal Actions for which the Settlors will seek reimbursement from the Fund .

VII. OTHER CONSIDERATIONS

A. This PDD is intended to benefit only the Settlors and EPA. It extends no benefit to nor creates any right in any third party.

B. If any material statement or representation made in the Application for Preauthorization is false, misleading, misrepresented, or misstated and EPA relied upon such statement in making its decision, the preauthorization by EPA may be withdrawn following written notice to the Settlors. Disputes arising out of EPA's determination to withdraw its preauthorization shall be governed by Section XX (Claims Against the Superfund) of the Agreement and Order. Criminal and other penalties may apply as specified in 40 C.F.R. Section 307.15.

C. The Fund's obligation in the event of failure of the removal action shall be governed by 40 C.F.R. Section 307.42(b). EPA may require the Settlors to submit any additional information needed to determine whether the actions taken were in conformance with the Agreement and Order and the Marsh Excavation Plan and were reasonable and necessary.

D. This preauthorization shall be effective as of the date of signature of the Agreement and Order by EPA Region 4.

Elaine Davis Jr

Stephen D. Luftig
Director, Office of
Emergency & Remedial
Response

11/3/97
DATE

EXHIBITS

1. Agreement and Order
2. Marsh Excavation Plan

Re: Whitehouse Waste Oil Pits

DECISION DOCUMENT
PREAUTHORIZATION OF A CERCLA SECTION 111(a) CLAIM

THE WHITEHOUSE WASTE OIL PITS SUPERFUND SITE
DUVAL COUNTY, FLORIDA

I. *STATEMENT OF AUTHORITY*

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9611, authorizes the reimbursement of response costs incurred in carrying out the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"). Section 112 of CERCLA, 42 U.S.C. § 9612, directs the President to establish the forms and procedures for filing claims against the Hazardous Substance Superfund ("Superfund" or the "Fund"). Executive Order 12580 (52 Fed Reg. 2923, January 29, 1987) delegates to the Administrator of the Environmental Protection Agency ("EPA") the responsibility for CERCLA claims and for establishing forms and procedures for such claims. The forms and procedures can be found in the Response Claims Procedures for the Hazardous Substance Superfund, 40 C.F.R. Part 307, 58 Fed. Reg. 5460 (January 21, 1993). Executive Order 12580 also delegates to the EPA Administrator the authority to reach settlements pursuant to Section 122(b) of CERCLA, 42 U.S.C. § 9622(b). The Director of the Office of Emergency and Remedial Response ("OERR") is delegated authority to evaluate and make determinations regarding claims (EPA Delegation 14-9, September 13, 1987 and EPA Redelegation 14-9 "Claims Asserted Against the Fund," May 25, 1988).

II. *BACKGROUND*

The 7-acre Whitehouse Waste Oil Pits Superfund Site is an abandoned waste oil sludge facility located about 10 miles west of Jacksonville, Florida, in Duval County. From about 1956 to 1968 Allied Petro-Products, Inc., operated the Site as a repository for waste oil sludge and acidic oil refinery by-products. Wastes were dumped in seven unlined pits on the Site. Allied ceased operations in 1968 and filed for bankruptcy.

In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, the Florida Department of Environmental Regulation ("FDER" now "FDEP") commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site in 1982 under a cooperative agreement with EPA pursuant to 40 C.F.R. § 300.430. The RI/FS was completed on May 30, 1985, with EPA's issuance of a Record of Decision ("ROD") for the Whitehouse Waste Oil Pits Superfund Site ("Site") calling for the construction of a surface cap and slurry wall to isolate the waste contamination at the Site. The ROD also called for recovery and treatment of contaminated groundwater from within the contained area, and removal of contaminated sediment from the northeast tributary of McGirts Creek and consolidation of this material within the containment area.

Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658-40673.

EPA executed an Amended Record of Decision ("1998 AROD") on September 24, 1998, following additional study of the site. EPA initiated a fund-financed Remedial Design on September 25, 1998. The final Remedial Design Report was approved on September 28, 2000. A copy of the report was provided to the Settling Defendants.

Pursuant to 40 C.F.R. § 300.435(c)(2)(i), EPA issued an Explanation of Significant Difference ("ESD") on July 16, 2001, documenting changes made to the selected remedy in the 1998 AROD arising from new information collected during the Remedial Design.

Prior to EPA's execution of the Amended Record of Decision, EPA invited approximately 65 potentially responsible parties ("PRPs") to participate in a Superfund Cost Allocation Pilot ("Pilot"). The purpose of the Pilot was to determine appropriate shares of responsibility for settlement purposes for the costs of the Remedial Action among PRPs at the Site, including PRPs which were insolvent or defunct (the "orphan share"). On January 31, 2000, the allocator in the Pilot issued the Final Allocation Report allocating shares of responsibility among all the PRPs, who are called "allocation parties". As a component of the Pilot for settlement purposes, EPA expressed its intent to finance 100% of the orphan share, which included the shares of insolvent or defunct allocation parties, subject to budgetary and legal constraints. In addition, since parties were able to settle for their fair share, EPA also became responsible for the shares of viable non-settling parties.

The City of Jacksonville, the David J. Joseph Company, Anchor Glass Container Corporation, Chevron USA, Inc., CSX Transportation, Inc,. and Florida East Coast Railway are the Settling Work Defendants who will perform the Remedial Action Work at the Site. The Statement of Work for the Remedial Action, which is attached to the Consent Decree as Appendix B, will be used to implement the remedy for the Site. The City submitted the preauthorization application on behalf of itself and the David J. Joseph Company. CSX Transportation, Inc. submitted the application on behalf of itself and the other non-governmental Work party settlers (except for the David J. Joseph Co.). On July 9, 2001, a formal application for preauthorization as required by Section 300.700(d) of the NCP and 40 C.F.R. § 307.22, was submitted, signed by both the City of Jacksonville and CSX Transportation, Inc. A Consent Decree between EPA and the Settling Defendants, including the Settling Work Defendants, is being executed simultaneously with this Decision Document ("Preauthorization Decision Document").

III. DESCRIPTION OF THE REMEDY

The major components of the remedy include the following: (1) in situ stabilization/solidification treatment of the top 3 feet of the waste oil pits; (2) installation of a slurry wall around the perimeter of the site; (3) construction of a low permeability RCRA cap

over the contained area; (4) realignment of the McGirts Creek tributary; (5) extension of the municipal water supply to residents along Machelle Drive and Chaffee Road and plugging of private supply wells; (6) installation of a permanent security fence and stormwater management controls; (7) monitored natural attenuation of contaminated groundwater outside the slurry wall; (8) excavation of contaminated off-site surface soil and sediment and disposal on-site within the containment system; and (9) imposition of deed restrictions to control future land and groundwater use.

IV. *FINDINGS*

Preauthorization (i.e., EPA's prior approval to submit a claim against the Superfund for reasonable and necessary response costs incurred as a result of carrying out the NCP) represents the Agency's commitment to reimburse a claimant from the Superfund, subject to any maximum amount of money set forth in this PDD, if the response action is conducted in accordance with the preauthorization and costs are reasonable and necessary. Preauthorization is a discretionary action by the Agency taken on the basis of certain determinations.

EPA has determined, based on its evaluation of relevant documents and the Settling Work Defendants' Application for Preauthorization ("Application") pursuant to 40 C.F.R. § 300.700(d) that:

(A) A release or potential release of hazardous substances warranting a response under Section 300.435 of the NCP exists at the Site;

(B) The Settling Work Defendants have agreed to implement the cost-effective remedy selected by the EPA to address the threat posed by the release at the Site;

(C) The Settling Work Defendants demonstrated engineering expertise and a knowledge of the NCP and attendant guidance;

(D) The activities proposed by the Settling Work Defendants, when supplemented by the terms and conditions contained herein, are consistent with the NCP; and

(E) The Settling Work Defendants demonstrated efforts to obtain the cooperation of the State of Florida.

EPA has determined, consistent with 40 C.F.R. § 307.23, that the Application submitted by the Settling Work Defendants demonstrates a knowledge of relevant NCP provisions, 40 C.F.R. Part 307, and EPA guidance sufficient for the conduct of a Remedial Action at the Site.

The Settling Work Defendants are generally obligated to comply with all provisions and representations in the Application for Preauthorization, and to notify EPA of any changed circumstances which alter those provisions. If circumstances change between the time the

Application is submitted, and the time of remedy implementation, it is in EPA's discretion to determine which Application provisions are still valid and which provisions no longer apply. The Consent Decree, including the terms and conditions of the PDD, and the ROD for OU I, shall govern the conduct of response activities at the Site. In the event of any ambiguity or inconsistency between the Application for Preauthorization and this PDD, with regard to claims against the Fund, the PDD and the Consent Decree shall govern.

V. *PREAUTHORIZATION DECISION*

I preauthorize the Settling Work Defendants to submit a claim(s) against the Superfund for an amount not to exceed the lesser of $6,206,599.47 or 81.59366 % of reasonable and necessary eligible costs for construction of the Remedial Action incurred pursuant to the 1998 AROD. This preauthorization is subject to compliance with the Consent Decree and the provisions of this PDD.

VI. *AUDIT PROCEDURES*

The Settling Work Defendants shall develop and implement audit procedures which will ensure their ability to obtain and implement all agreements to perform preauthorized response actions, in accordance with sound business judgment and good administrative practice as required by 40 C.F.R. § 307.32(e). Those requirements shall include but not necessarily be limited to the following procedures.

A. The Settling Work Defendants will develop and implement procedures which provide adequate public notice of solicitations for offers or bids on contracts. Solicitations must include evaluation methods and criteria for contractor selection. The Settling Work Defendants shall notify EPA of the qualifications of all contractors and principal subcontractors hired to perform preauthorized response actions. Consent Decree, Section VI ("Performance of the Work By Settling Work Defendants"). EPA shall have the right to disapprove the selection of any contractor or subcontractor selected by the Settling Work Defendants. EPA shall provide written notice to the Settling Work Defendants of any such disapproval.

B. As required by 40 C.F.R. § 307.21(e), the Settling Work Defendants will develop and implement procedures for procurement transactions which provide maximum open and free competition; do not unduly restrict or eliminate competition; and provide for the award of contracts to the lowest, responsive, responsible bidder. The Settling Work Defendants and their contractors shall use free and open competition for all supplies, services and construction with respect to the Work performed at the Site. There are a number of ways that the Settling Work Defendants can meet these requirements including but not limited to the following:

1. For example, if the Settling Work Defendants award a fixed price contract to a prime contractor, the Settling Work Defendants have satisfied the requirement of open and free competition with regard to any subcontracts awarded within the scope of the prime contract.

2. The Settling Work Defendants are not required to comply with the Federal procurement requirements found at 40 C.F.R. Part 33 or EPA's Guidance on State Procurement Under Remedial Cooperative Agreements (OSWER Directive 9375.1-11, June 1988) in meeting these requirements. However, EPA does require that the Settling Work Defendants use these documents for guidance in developing procurement procedures for small purchases, formal advertising, competitive negotiations and noncompetitive negotiations as each may be appropriate to remedying the release or threat of release at the Site.

3. With reference to small purchase procedures, EPA defines small purchase procedures as those relatively simple, informal procurement methods for securing services, supplies and other property from an adequate number of qualified sources in instances in which the services, supplies and other property being purchased constitute a discrete procurement transaction and do not cost more than a certain amount in the aggregate (Example: $25,000). Settling Work Defendants can meet the requirements of maximum free and open competition with respect to small purchases by developing procedures which follow 40 C.F.R. Part 33 or EPA's Guidance on State Procurement Under Remedial Cooperative Agreements (OSWER Directive 9375.1-11, June 1988). However, Settling Work Defendants shall in no event divide procurement transactions into smaller parts to avoid the dollar limitation.

C. The Settling Work Defendants may use a list or lists of pre-qualified persons, firms, or products to acquire goods and services. The Settling Work Defendants shall make each pre-qualification using evaluation methods and criteria which are consistent with the selection and evaluation criteria developed pursuant to Section VI.A., above. Such list(s) must be current and include enough qualified sources to ensure maximum open and free competition. The Settling Work Defendants shall not preclude potential offerors not on the pre-qualified list from qualifying during the solicitation period.

D. The Settling Work Defendants shall develop and implement procedures to settle and satisfactorily resolve all contractual and administrative matters arising out of agreements to perform preauthorized response actions, in accordance with sound business judgment and good administrative practice as required by 40 C.F.R. § 307.32(e).

All of the following actions shall be conducted in a manner to assure that the preauthorized response actions are performed in accordance with all terms, conditions and specifications of contracts as required by EPA: (1) invitations for bids or requests for proposals; (2) contractor selection; (3) subcontractor approval; (4) change orders and

contractor claims (procedures should minimize these actions): (5) resolution of protests, claims, and other procurement related disputes; and (6) subcontract administration.

E. The Settling Work Defendants shall develop and implement a change order management policy and procedure generally in accordance with EPA's guidance on State Procurement Under Remedial Cooperative Agreements (OSWER Directive 9375.1-11, June 1988).

F. The Settling Work Defendants shall develop and implement a financial management system that consistently applies generally accepted accounting principles and practices and includes an accurate, current, and complete accounting of all financial transactions for the project, complete with supporting documents, and a systematic method to resolve audit findings and recommendations.

G. The Remedial Action Work Plan shall require the Settling Work Defendants to develop and submit to EPA a Project Delivery Strategy to address the management approach for implementing the Remedial Action, including but not limited to procurement methods and contracting strategy and a Construction Management Plan addressing how the construction activities are to be implemented and coordinated with EPA. This Plan shall include an identification of key project management personnel, complete with roles, responsibilities and lines of authority (financial and decisional), and an organizational chart.

H. Modification of Remedial Design elements or performance requirements contained in the Consent Decree or the final Remedial Design shall require approval by the EPA Regional Administrator or his/her designee. Such modifications, when approved by the Regional Administrator in accordance with Agency procedures, shall modify this PDD.

VII. *CLAIMS PROCEDURES*

A. Pursuant to Section 111(a)(2) of CERCLA, EPA may reimburse necessary response costs incurred as a result of carrying out the NCP that satisfy the requirements of 40 C.F.R. § 307.21, subject to the following limitations:

1. Costs may be reimbursed only if incurred after the date of this preauthorization;

2. Costs incurred for long-term operation and maintenance are not eligible for reimbursement from the Superfund;

3. Activities included within the Operation and Maintenance Plan and costs associated with such activities are ineligible for reimbursement from the Fund; and

4. Any amounts received by Settling Work Defendants from Settling Cash-Out Defendants, Settling Federal Agencies or any person that has entered into the CERCLA §122(g) *de minimis* settlement with the United States with respect to the Site may not be included in a claim for reimbursement from the Fund.

B. In submitting claims to the Superfund, the Settling Work Defendants shall:

1. Document that response activities were preauthorized by EPA;

2. Substantiate all claimed costs through an adequate financial management system that consistently applies generally accepted accounting principles and practices and includes an accurate, current and complete accounting of all financial transactions for the project, complete with supporting documents, and a systematic method to resolve audit findings and recommendations; and

3. Document that all claimed costs were eligible for reimbursement, consistent with applicable requirements of 40 C.F.R. Part 307.

C. Claims may be submitted against the Fund by the Settling Work Defendants only while the Settling Work Defendants are in compliance with the terms of the Consent Decree. Claims can be submitted at completion of phases of work, which include:

1. Completion of the Land Acquisition; estimated completion date is June 2002.

2. Completion of the McGirt's Creek Response Action; estimated completion date is December 2002.

3. Completion of Solidification; estimated completion date is January 2003.

4. Completion of the Tributary Realignment; estimated completion date is April 2003.

5. Completion of the Barrier Wall; estimated completion date is September 2003.

6. Completion of the Water Main Extension; estimated completion date is September 2003.

7. Completion of the Cap; estimated completion date is November 2003.

8. Completion of the Monitor Well Installation; estimated completion date is January 2004.

VIII. *OTHER CONSIDERATIONS*

A. This PDD is intended to benefit only the Settling Work Defendants and EPA. It extends no benefit to nor creates any right in any third party.

B. If any material statement or representation made in the Application for Preauthorization is false, misleading, misrepresented, or misstated and EPA relied upon such statement in making its decision, the preauthorization by EPA may be withdrawn following written notice to the Settling Work Defendants. Disputes arising out of EPA's determination to withdraw its preauthorization shall be governed by Section XVII ("Claims Against the Superfund") of the Consent Decree. Criminal and other penalties may apply as specified in 40 C.F.R. § 307.15.

C. The Fund's obligation in the event of failure of the Remedial Action shall be governed by 40 C.F.R. § 307.42. EPA may require the Settling Work Defendants to submit any additional information needed to determine whether the actions taken were in conformance with the Consent Decree and were reasonable and necessary.

D. This preauthorization shall be effective as of the date of signature; provided, however, that no claim will be submitted to the Superfund prior to entry of the Consent Decree by the Court.

E. If it is subsequently determined that the preauthorized response actions that comprise the Remedial Action require modification, or if it appears that project costs for the Remedial Action will exceed $11,368,410, a revised application for preauthorization may be submitted to EPA for up to 63.40747 % of that portion of the necessary costs incurred by Settling Work Defendants in completing the Remedial Action in accordance with the Consent Decree, the ROD, the Remedial Design, and this PDD which exceeds $11,368,410. In accordance with the requirements of 40 C.F.R. § 307.22(i), a revised application for preauthorization must be approved by EPA before different, or additional, actions are undertaken if such actions are to be eligible for compensation from the Fund.

Elaine F. Davies

ELAINE F. DAVIES, ACTING DIRECTOR
Office of Emergency and Remedial Response

10/18/01
DATE

Re: Peak Oil Site, Bay Drums Site,
Reeves Southeastern Corp. Site
Ref: CERCLA 87-003

Site: Peak/Bay
Break: 2.9 (c.3)
Other: 2/9/89

DECISION DOCUMENT

PREAUTHORIZATION OF A CERCLA §111(a) CLAIM

Peak Oil, Bay Drums, and Reeves Southeastern Corp. Sites, Tampa, Florida

STATEMENT OF AUTHORITY

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) authorizes the reimbursement of response costs incurred in carrying out the National Contingency Plan (NCP). Section 112 of CERCLA directs the President to establish the forms and procedures for filing claims against the Hazardous Substance Superfund ("the Superfund" or "the Fund"). Executive Order 12580 delegates to the Environmental Protection Agency ("EPA") the responsibility for such claims. Executive Order 12580 also delegates to EPA the authority to reach settlements pursuant to section 122(b) of CERCLA. The Director, Office of Emergency and Remedial Response ("Director, OERR") is delegated authority to evaluate and make determinations regarding claims (EPA Delegation 14-9, September 13, 1987 and Redelegation R-14-9 "Claims Asserted Against the Fund," May 25, 1988).

BACKROUND ON THE SITE

On September 8, 1983 (48 FR 40674), EPA published the first National Priorities List (NPL) of 406 hazardous waste sites. The Reeves Southeastern Corporation site was among the first NPL sites. This site is located adjacent to two other sites, Peak Oil and Bay Drums, combined by EPA for purposes of NPL listing, which were placed on the NPL on June 10, 1986 (51 FR 21054). These three sites (hereinafter referred to as the "Sites"), listed in the first 100, are the top-priority sites for cleanup.

The three sites are located on State Road 574 east of Tampa, Hillsborough County, Florida, near Highways 60, 301, Interstate 4 and Faulkenburg Road, and are situated on generally contiguous parcels of property.

Reeves Southeastern Corporation has agreed to perform a site-specific surface study of the Reeves Southeastern Corporation site. A group of the potentially responsible parties who are associated with the Peak Oil site (hereinafter "Peak Oil Generators Group") have agreed to perform a site-specific surface study of the Peak Oil site. EPA will perform the site-specific surface study of the Bay Drums site. The surface studies of the Reeves and Peak Oil sites are the subject of separate consent orders.

Although the three sites were operated independently, EPA proposed to the potentially responsible parties ("PRPs") that they conduct a single, area-wide ground water Remedial Investigation and Feasibility Study (RI/FS) of the Sites. While EPA proposed that the Peak and Reeves PRPs perform the area-wide RI/FS, EPA has decided to finance the Bay Drums portion of the studies. EPA believes that a single study will be less likely to suffer from problems of data integration and time frame coordination, and would be technically more sound. Such a study will be less costly than three independent studies and will be more efficient.

Reeves Southeastern Corporation's manufacturing processes include wire drawing, weaving of chain link fabric, reinforcing mesh, chain link fabric galvanizing, commercial hot dip galvanizing, and gate fabrication and prior to 1972, barrel plating. Two manufacturing divisions, the Southeastern Galvanizing Division and the Southeastern Wire Division are located on opposite sides of State Road 574 in east Tampa. Since the 1950's, several unlined ponds to accept process wastes and wastewater have been constructed at the Wire Division. The wastes included spent caustic cleaner (sodium hydroxide), spent pickling liquor and rinse/quench waters. The wastewater was characterized by low pH and high concentration of metals. In 1982, Reeves constructed a neutralization/precipitation wastewater pretreatment at the Southeastern Galvanizing Division. Wastewater from the Wire Division and the Galvanizing Division was then treated at the Galvanizing Plant. The Galvanizing Plant is located on the north side of State Road 574, across the highway from the Wire Division Plant and the Peak Oil and Bay Drums sites. The Galvanizing Plant also utilized unlined percolation/evaporation ponds until approximately mid-1982, as stated above. These ponds were used for the disposal of neutralized spent sulfuric acid pickle liquor, neutralized spent caustic cleaners and rinse/quench waters. Wastewaters were characterized by low pH and high concentrations of iron, zinc and chromium. Water and sediment samples collected by EPA downstream of the Galvanizing Plant revealed elevated levels of ammonia, nitrogen, chlorides, zinc and several other metals. Ground water samples taken from monitoring wells downgradient from the ponds showed high levels of zinc, iron and sodium.

The Peak Oil site was established in the early 1950's as a used oil re-refining facility. Peak Oil Company handled used oil from many different sources with the majority apparently being used automobile and truck crankcase oil, and also including, but not limited to, hydraulic oils, transformer fluids and other used oils. The acid/clay process used until 1979 or 1980 generated an acidic oily sludge contaminated with hazardous substances including solvent-type chemical compounds, heavy metals and polychlorinated biphenyls ("PCBs"). As a result of Peak's operations, on-site soils, surface waters and ground water have become contaminated with hazardous substances found in the sludge and used oil. In 1986, EPA initiated a removal action utilizing a mobile incinerator with its infra-red thermal destruction process to eliminate the acidic PCB sludge found in the open, unlined sludge lagoon.

Between approximately 1960 and 1978, the Bay Drums site was operated as a drum recycling business. Fifty-five gallon drums from a variety of industrial sources, including paint, oil and chemical companies, were rinsed out, cleaned, reconditioned and recycled. The approximately 15-acre site consists of several large steel sheds, which were used for washing, storage and painting of drums, and a washwater holding pond. The pond drained and/or seeped towards another pond and soggy ground. Around 1983, a scrap metal/junk yard was operating at the south end of the property. In 1984, the owner leased the site to a firm which operated a roofer's dump. The operator accepted used roofing materials (shingles, decking, drums of roofing tar, etc.) and siding from waste haulers and roofers. The roofing materials as well as other trash and debris are piled up around the site. The site contains organic and inorganic compounds including chlordane, toluene, methylene chloride, lead, chromium and cadmium in the surface water (washwater ponds and wetlands), ground water, soils and sediments.

On September 26, 1987, a formal Request for Preauthorization was submitted on behalf of the Peak Oil Site Generators Group and Reeves Southeastern Corporation, as required by section 300.25(d) of the National Contingency Plan (NCP) (40 CFR Part 300), to undertake the area-wide ground water RI/FS at the Sites. Implementation of the RI/FS has awaited finalization of the Sites' Work Plan and EPA's development of procedures for the removal of the roofing materials from the Bay Drums Site.

An Administrative Consent Order for the area-wide ground water RI/FS, between EPA and the Reeves Southeastern Corporation and the Peak Oil Site Generators Group (hereinafter referred to as the "Respondents"), is being executed simultaneously with this Preauthorization Decision Document ("PDD"), and shall be referred to hereinafter as the "Administrative Consent Order."

FINDINGS

Preauthorization (i.e., EPA's prior approval to submit a claim against the Fund for reasonable and necessary response costs incurred as a result of carrying out the NCP) represents the Agency's commitment that if the response action is conducted in accordance with the preauthorization and costs are reasonable and necessary, reimbursement, subject to any maximum amount of money set forth in the preauthorization decision document, will be had from the Fund. Preauthorization is a discretionary action by the Agency taken on the basis of certain determinations.

As required by section 104(a)(1) of CERCLA, the Respondents have not been held to a lesser standard of liability, nor have they received preferential treatment. The Respondents have assured EPA that they will not, directly or indirectly, benefit from the preauthorization at the Sites as a response action contractor or as a person hired or retained by such a response action contractor.

The Respondents have agreed under the terms of the Administrative Consent Order to reimburse EPA for sixty percent (60%) of oversight expenses associated with the area-wide ground water RI/FS.

EPA has determined based on its evaluation of relevant documents and the Request for Preauthorization, pursuant to section 300.25(d) of the NCP, that:

(1) The activities proposed by the Respondents are studies and investigations authorized pursuant to section 104(b) of CERCLA;

(2) The Respondents have agreed to implement the area-wide ground water RI/FS at the Sites in a cost-effective manner;

(3) The Respondents have demonstrated engineering expertise and a knowledge of the NCP and attendant guidance;

(4) The response activities proposed by the Respondents, when supplemented by the terms and conditions contained herein, are consistent with the NCP; and

(5) The Respondents have demonstrated evidence of State cooperation.

While EPA does not accept as fact all of the statements contained in the Respondents' Request for Preauthorization, the Request for Preauthorization demonstrates a knowledge of relevant NCP provisions and EPA guidance for the conduct of a response action. The Administrative Consent Order, the terms and conditions of this PDD and, in technical matters, the Work Plan shall govern the conduct of response activities. In the event of any ambiguity or inconsistency between the Request for Preauthorization and this PDD, the PDD shall govern. As stated above, in technical matters, the Work Plan shall govern the conduct of response activities.

DECISION AND TERMS AND CONDITIONS

I preauthorize the Respondents identified in the Administrative Consent Order (Exhibit 1 hereto) to submit a claim(s) against the Superfund for an amount not to exceed the lesser of seven hundred thousand dollars ($700,000), or forty percent (40%) of reasonable and necessary eligible costs, unless such amount is adjusted by EPA pursuant to paragraph 16 below, incurred in conducting an area-wide ground water RI/FS of the Peak Oil, Bay Drums, and Reeves Southeastern Corp. sites (referred to as the "Sites") as specified in the Work Plan (which is an attachment to the Administrative Consent Order) and subsequent revisions to the Work Plan as approved by EPA, subject to the terms and conditions set forth below. In the event of any ambiguity or inconsistency between the terms and conditions and the Discussion (which follows some of the terms and conditions), the terms and conditions shall govern.

1) The Respondents shall implement the worker health and safety plan approved by EPA in a manner consistent with OSHA Safety and Health Standards: Hazardous Waste Operations and Emergency Response (29 CFR Part 1910.120; 51 Federal Register 45654 et seq., December 19, 1986).

2) The Respondents shall implement the Work Plan approved by EPA for the conduct of the area-wide ground water RI/FS in a manner consistent with EPA's guidance documents entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (September 1988, OSWER Directive No. 9355.3-01) and "Interim Guidance on Superfund Selection of Remedy" (OSWER Directive No. 9355.0-19), and any subsequent revisions thereto.

3) The Feasibility Study shall contain an identification of applicable, or relevant and appropriate Federal and State requirements (ARARs) as required by section 121 of CERCLA and in conformance with EPA's guidance entitled "CERCLA Compliance with Other Laws Manual (Part 1) - August 1988 (OSWER Directive No. 9234.1-01).

4) The alternatives considered by the Respondents as a part of the Feasibility Study must consider for each alternative any cost for long-term site management (i.e., operation and maintenance) sufficient to ensure continuing protection of human health and the environment.

5) Prior to conducting any field work pursuant to the Work Plan, the Respondents shall develop and submit to EPA for review a Sampling and Analysis Plan consistent with "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (September 1988, OSWER Directive No. 9355.3-01) and any subsequent revisions thereto.

6) Prior to conducting any field work pursuant to the Work Plan, the Respondents shall develop and submit to EPA for approval a Quality Assurance/Quality Control Plan prepared in accordance with "Guidelines and Specifications for Preparing Quality Assurance Program Plans and Quality Assurance Annual Reports and Work Plans" (September 1987), "Interim Guidelines and Specifications for Preparing Quality Assurance Projects Plans," QAMS - 005/80 and "Data Quality Objectives for Remedial Response Activities" (March, 1987, OSWER Directive No. 9355.0-7B).

7) The Respondents shall provide to EPA all information necessary for the Agency to implement a community relations plan. In addition, the Respondents shall provide the data and analysis required by the Agency for Toxic Substances and Disease Registry (ATSDR) to perform the health assessment of the Sites required by section 104 of CERCLA.

Discussion:

The Respondents' Request for Preauthorization, consistent with the NCP, noted that they would provide support to EPA necessary to implement its community relations plan. More information on the nature of this support is contained in "Community Relations in Superfund: A Handbook" (June 1988) OSWER Directive No. 9230. 3-3B. Further guidance on the coordination of RI/FS activities with ATSDR can be found in "Guidance for Coordinating ATSDR Health Assessment Activities with the Superfund Remedial Process" (March, 1987 - OSWER Directive No. 9285.4-02).

8) The Respondents shall, at a minimum, submit monthly progress reports, technical reports, and draft/final RI/FS reports as required by the Administrative Consent Order. EPA may require such other reports as may be necessary to assist in the development of the RI/FS and the review of documents. Meetings between EPA and the Respondents will be held on a regular basis and at critical times during the RI/FS. Such critical times may include when the Work Plan is reviewed, wells are installed, the RI is completed, remedial alternatives are developed, ARARs are selected, and the draft and final RI/FS reports are submitted.

Discussion:

The Respondents' Request for Preauthorization did not contain sufficient detail on reporting and oversight by EPA, although such information is suggested by section 9. of EPA's "Guidance on Requests for Preauthorization by Potentially Responsible Parties for Remedial Investigation and Feasibility Studies (Draft: July 27, 1987). The Respondents should seek additional guidance from EPA if the requirements stated above are unclear.

9) As required by the Administrative Consent Order, the Respondents shall notify EPA in advance of field activities to be conducted on-site or off-site to enable the Agency, as appropriate, to arrange for oversight of such field activities.

10) As required by the EPA approved Work Plan for the Sites, the Respondents shall develop and submit to EPA a Work Plan Supplement for Phase II Remedial Investigation Activities. The Respondents shall not initiate such activities until EPA has approved or approved with modifications the Work Plan Supplement. The costs of developing and implementing the Work Plan Supplement are included within the maximum amount for which claims may be submitted by the Respondents as stated above.

11) The procedures utilized by the Respondents to secure the services of an architectural and engineering (A&E) firm have been reviewed by EPA and appear to have been reasonable.

The Respondents will manage and implement their contract(s) and subcontract(s) in a manner to ensure:

a) Procedures for procurement transactions which: provide maximum open and free competition; do not unduly restrict or eliminate competition; and provide for the award of contracts to the lowest, responsive, responsible bidder, where the selection can be made principally on the basis of price. The Respondents and their contractors shall use free and open competition for supplies and services.

b) Procedures to settle and satisfactorily resolve, in accordance with sound business judgment and good administrative practice, all contractual and administrative issues arising out of preauthorized actions. The Respondents shall issue invitations for bids or requests for proposals; select contractors; approve subcontractors; manage contracts in a manner to minimize change orders and contractor claims; resolve protests, claims, and other procurement related disputes; and handle contracts and subcontracts to assure that work is performed in accordance with terms, conditions and specifications of contracts.

c) A change order management policy and procedure generally in accordance with EPA's guidance on State Procurement Under Remedial Cooperative Agreements (OSWER Directive 9375.1-11, June 1988).

d) A financial management system that consistently applies generally accepted accounting principles and practices and includes an accurate, current and complete accounting of all financial transactions for the project, complete with supporting documents, and a systematic method to resolve audit findings and recommendations.

Discussion:

The Respondents' Request for Preauthorization incorrectly states that EPA oversight, including oversight of the Respondents' contractor's costs, will provide expenditure limitations. While EPA will oversee the work conducted pursuant to the Administrative Consent Order, EPA will not oversee the Respondents' contractor's costs. To facilitate subsequent adjustment of claims as provided by Paragraph 18 of these Terms and Conditions, the Respondents shall develop and implement a systematic financial management system.

12) The Respondents will provide EPA and its employees, contractors and agents with site access in accordance with pertinent provisions of the Administrative Consent Order and shall immediately notify the Agency if they are unable to initiate or complete the preauthorized response action.

13) In submitting claims to the Fund, the Respondents shall:

a) Document that response activities were preauthorized by EPA;

b) Substantiate all claimed costs through a financial management system as described in paragraph 11(d); and

c) Document that all claimed costs were eligible for reimbursement pursuant to this PDD and are reasonable and necessary in accordance with the appropriate Federal cost principles.

14) The Respondents shall maintain all cost documentation and any records relating to their claim for a period of not less than six years from the date on which the final claim has been submitted to the Fund, and shall provide EPA with access to their records. At the end of the six year period, the Respondents shall notify EPA of the location of all records and allow EPA the opportunity to take possession of the records before they are destroyed. This requirement is in addition to the independent record retention requirement located at Section XI of the Administrative Consent Order. The Respondents shall cause to be inserted in all agreements between themselves and contractors performing work at the Sites a clause providing for the same requirement to maintain records and to provide access to records as that required of the Respondents.

15) Claims may be submitted against the Fund only while the Respondents are in compliance with the terms of the Administrative Consent Order and no more frequently than EPA's acceptance of the following:

a) the Final Remedial Investigation Phase I Report;

b) the Final Remedial Investigation Phase II Report; and

c) the Final Feasibility Study Report.

16) If the Respondents find it necessary to seek to modify the actions that EPA preauthorized as a result of additional work required by EPA pursuant to Section VI.H of the Administrative Consent Order, or if it becomes apparent that the project's costs will exceed the approved costs, the Respondents may submit to EPA a revised request for preauthorization. EPA will consider such a request in a timely manner and will, if appropriate, subject to the availability of appropriated funds, increase the maximum amount for which the Respondents may submit claims against the Fund.

Discussion:

Section VI.H of the Administrative Consent Order provides

that if EPA determines that additional tasks are required beyond the scope of the Administrative Consent Order, the costs are reasonable, and the Respondents agree to perform such tasks, EPA agrees to reimburse as mixed funding a share of reasonable and necessary additional eligible costs in the same proportion as provided above. EPA will, subject to the availability of appropriated funds, revise the maximum amount for which claims may be submitted if the costs of additional tasks is sufficient in amount to exceed the estimated cost, including the contingency.

17) Claims shall be submitted to the Director, Office of Emergency and Remedial Response, EPA, Washington, D.C. 20460. EPA shall provide the appropriate form(s) for such claims.

18) EPA may adjust claims using the facilities and services of private insurance and claims adjusting organizations, or State or Federal personnel. In making a determination whether costs are allowable, the claims adjuster will rely upon the appropriate Federal cost principles (non-profit organizations - OMB circular A-122; profit making organizations - 48 CFR Subparts 31.1 and 31.2). Where additional costs are incurred due to acts or omissions of the Respondents, payment of the claim will be adjusted accordingly. EPA may require the Respondents to submit any additional information needed to determine whether the actions taken were reasonable and necessary.

19) At least 60 days before filing a claim against the Fund for the area-wide ground water RI/FS of the Sites, the Respondents shall present in writing all claims to any person known to the Respondents who may be liable under section 107 of CERCLA for response costs incurred in connection with the Bay Drums Site. If the first claim was denied by the potentially responsible party or not responded to, and EPA agrees that there is no reason to believe that subsequent claims would be honored by such party, the denial of the first claim, or lack of response, shall be considered denial of every subsequent claim.

20) Payment of any claim shall be conditioned upon the Respondents subrogating to the United States their rights against the Bay Drums PRPs to the extent to which the Respondents' response costs are compensated from the Fund. Further, the Respondents shall cooperate with any cost recovery action which may be initiated by the United States. The Respondents and the Respondents' contractors shall furnish the personnel, services, documents, and materials needed to assist EPA in the collection of evidence to document work performed and costs expended by the Respondents or the Respondents' contractors at the Sites in order to aid in cost recovery efforts. Assistance shall also include providing all requested assistance in the interpretation of evidence and costs and providing requested testimony. All of the Respondents' contracts for implementing

the Administrative Consent Order shall include a specific requirement that the contractors agree to provide this cost recovery assistance.

21) Eligible costs:

Eligible costs are those costs incurred, consistent with the NCP, in carrying out the tasks included in the Work Plan and subsequent revisions to the Work Plan as approved by EPA, subject to the following limitations:

a) Costs may be reimbursed only if incurred after the date of this preauthorization;

b) Costs may be reimbursed only for the area-wide ground water RI/FS of the Sites, including the costs of the Public Health Evaluation, the Comprehensive Endangerment Assessment and furnishing data for the Endangerment Assessment to be conducted by EPA and the health assessment to be conducted by ATSDR. Ineligible costs shall include but shall not be limited to oversight costs incurred by EPA and the costs of any PVC well(s) south of State Road 574. Costs for the collection and analysis of filtered samples may be subsequently determined by EPA to be eligible, but only if specifically authorized consistent with EPA Regional policies and procedures;

c) Costs incurred for the payment of a person who is listed in the List of Parties Excluded From Federal Procurement or Non-Procurement, established pursuant to Executive Order 12549, May 26, 1988, at the time the contract is awarded shall not be eligible for reimbursement unless the Respondents obtain approval from EPA pursuant to 40 CFR Part 32 prior to incurring the obligation;

d) Costs incurred for the payment of contractor claims either through settlement of such claims or an award by a third party may be reimbursed from the Fund to the extent that EPA determines:

(i) the contractor claim arose from work within the scope of the contract at issue and the scope of said contract was for activities which were preauthorized;

(ii) the contractor claim is meritorious;

(iii) the contractor claim was not caused by the mismanagement of the Respondents;

(iv) the contractor claim was not caused by the Respondents' vicarious liability for improper actions of others;

(v) the claimed amount is reasonable and necessary;

(vi) the claim for such costs is filed by the Respondents within 5 years of completion of the preauthorized activities; and

(vii) payment of such a claim will not result in total payments from the Fund in excess of the amount preauthorized;

Discussion:

"Contractor claim" means the disputed portion of a written demand or written assertion by any contractor who has contracted with the Respondents pursuant to the Administrative Consent Order to perform any portion of the area-wide ground water RI/FS, seeking as a matter of right, the payment of money, adjustment, or interpretation of contract terms, or other relief, arising under or related to a contract, which has been finally rejected or not acted upon by the Respondents and which is subsequently settled by the Respondents or an award by a Third Party in accordance with the Disputes Clause of the contract document.

e) An award by a third party on a contractor claim should include:

(i) findings of fact;

(ii) conclusions of law;

(iii) allocation of responsibility for each issue;

(iv) basis for the amount of award; and

(v) the rationale for the decision.

f) Interest accrues on amounts due the Respondents pursuant to this agreement where EPA fails to pay the amount within sixty (60) days of EPA's receipt of a completed claim from the Respondents. A completed claim is a demand for a sum certain which includes all documentation required to substantiate the appropriateness of the amounts claimed. Where the Respondents submit a claim which is technically complete but for which EPA requires additional information in order to evaluate the amount claimed, interest will not accrue on the claim until sixty (60) days after EPA's receipt of the requested additional information. The rate of interest paid on a claim is the rate of interest on investments of the Fund established by subchapter A of Chapter 98 of the Internal Revenue Code of 1954.

22) This Preauthorization Decision Document is intended to benefit only the Respondents and EPA. It extends no benefit to nor creates any right in any third party.

23) If any material statement or representation made in the application for preauthorization is false, misleading, misrepresented, or misstated and EPA relied upon such statement in making its decision, the preauthorization by EPA may be withdrawn following written notice to the Respondents. Disputes arising out of EPA's determination to withdraw its preauthorization shall be governed by Section XII of the Administrative Consent Order. Criminal and other penalties may apply (see Exhibit 2).

24) This PDD shall be effective as of the effective date of the Administrative Consent Order for the Sites.

Henry L. Longest II — Date 2/9/89
Director, Office of
Emergency and Remedial Response

EXHIBITS

1. Administrative Consent Order
2. Civil and Criminal Penalties

EXHIBIT 2

CERCLA PENALTY FOR PRESENTING FRAUDULENT CLAIM

Any person who knowingly gives or causes to be given false information as a part of a claim against the Hazardous Substance Superfund may, upon conviction, be fined in accordance with the applicable provisions of title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both. (42 USC 9612 (b)(1).)

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM

The claimant is liable to the United States for a civil penalty of $2,000, and an amount equal to two times the amount of damages sustained by the Government because of the acts of that person, and costs of the civil action. (31 USC 3729 and 3730.)

CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS

The claimant will be charged a maximum fine of not more than $10,000 or be imprisoned for a maximum of 5 years, or both. (See 62 Stat. 698, 749; 18 USC 287, 1001.)